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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 800

SUBURBAN TELEPHONE COMPANY, A CORPORATION,
Appellant,

vs.

THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, A CORPORATION, ET AL.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW MEXICO.

PETITION FOR REHEARING OF DISMISSAL OF APPEAL AND DENIAL OF CERTIORARI.

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THE SUTHERLAND-BASSETT PRINTING COMPANY, CHICAGO

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SUBURBAN TELEPHONE COMPANY, A CORPORATION,
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ON APPEAL FROM THE SUPREME COURT OF NEW MEXICO.

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Suburban Telephone Company prays that this Court grant rehearing of its dismissal of the appeal and denial of certiorari of March 30, 1964, and that the judgment of March 30, 1964 be vacated and the appeal reinstated or, in the alternative, that a writ of certiorari issue to review the judgment of the Supreme Court of New Mexico in the above-entitled case as prayed for in the jurisdictional statement filed herein on January 31, 1964.

REASONS FOR GRANTING REHEARING

When this Court determined that "due process is not measured by the yardstick of personal reaction or the sphygomogram of the most sensitive person, but by that whole community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct" (*Breithaupt* v. *Abram*, 352 U. S. 432, 436), it fixed a standard often difficult to find to have been breached but one which was surely violated by the judgment of the Supreme Court of New Mexico in this case. The sense of decency and fairness of the whole community is certainly shocked and shaken when an economic giant is permitted to swallow a small enterprise which by every test of law and fact has laid first claim to a territory for public service.

The equal protection clause forbids legislation in any form or judicial construction thereof by which the property of one person is, without compensation, wrested from him for the benefit of another. *Reagan* v. *Farmers Loan & Trust Co.*, 154 U. S. 362.

The fundamental reason why the wrong perpetrated by the state court is gross enough and by its nature cries loudly enough to justify constitutional remedy by this Court was early advanced in *Truax* v. *Corrigan*, 257 U. S. 312, 331-333, where this Court said:

> "The due process clause . . . tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty and property, which the Congress or the legislature may not withhold. Our whole system of law is predicated on the general, fundamental principle of equality of application of the law . . . But the framers and adopt-

> ers of this amendment were not content to depend on a mere minimum secured by the due process clause, or upon the spirit of equality which might not be insisted on by local public opinion. They therefore adopted that spirit in a specific guaranty. The guaranty was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality, on the other. It sought an equality of treatment of all persons, even though all enjoyed the protection of due process."

Substantive due process for property rights can not be so dead that it lacks even the vitality to protect against the monstrous deprivation of property without compensation and with wanton discrimination effected by the Supreme Court of New Mexico by its judgment in this case. Such a conspicuous constitutional violation creates jurisdiction in this Court.

CONCLUSION.

For the reasons set forth above and in the jurisdictional statement, it is respectfully urged that rehearing be granted and that upon such rehearing the judgment of March 30, 1964, be vacated and the appeal reinstated, or in the alternative, that a writ of certiorari issue to Supreme Court of New Mexico.

Respectfully submitted,

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CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay in accordance with Rule 58 of the Rules of this Court.

.....
Counsel for Appellant.